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# SERIE RESEARCH MEMORANDA

Information Systems Strategy and Law

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# Information Systems Strategy and Law

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It is even more difficult to write intelligibly about drafting than to draft intelligibly. – quoted in Namasivayam (1967)

**Abstract:** There are some parallels between the world of law and the world of information systems practice. This paper draws on some insights from the former to discuss some issues in the formulation and implementation of information systems (IS) strategy. The **crafting** of laws of a country is a process that entails argumentation, negotiation, compromise and exercise of power in the societal context of ideology, power structure, culture and historical legacy. Once formulated, the law goes through a process of interpretation by the key players and other stakeholders. While laws are intended to forbid certain practice, society and economy can sometimes profit by ignoring them. Finally laws are also enacted in a move to provide legitimisation for certain activity. All these features can be found in the formulation IS strategy and its implementation. These features in the law-related phenomena are not exhaustive. They are meant to stimulate further studies to draw upon insights from the rich activity of legal practice to help us inform and reflect on IS strategy formulation and implementation.

Key words: legal practice, information systems strategy, formulation, implementation.

## 1 Introduction

Consider something called X that exercises or is supposed to exercise immense influence on behaviour of members of a social unit. X takes a long-term view of social development; it is an object of contention of all interested parties. Even though X is formulated in as clear a language as possible, its interpretation is just as important and contentious. Though X is supposed to function as a tool guiding activity or behaviour, there are almost inevitable cases where it makes practical sense

to not **to** ignore it. **X** represents something that is common in social life. **We** can **recognise** it as high level economic policy, **as a piece of law**, or as an information systems strategy.

The aim of this paper is to draw upon some interesting insights **from** the world of laws to reflect on information systems strategy of an **organisation**. I must hasten to add that **such** exercise has its limits. Like an old bicycle, it cannot **bring** you too far. But it **can** nonetheless help **us to articulate our (re-)thinking and reflection on some** of the key issues in the area of IS strategy formulation and **implementation**.

Both law making and formulation of an IS strategy are human activities **taking** place within a concrete wider context, be it societal, historical, and **organizational** or business environment. They are guided by social norms and ethical rules, either written or otherwise. They are supposed to extract lessons **from the past and to distil** the lessons in a forward looking way in order to guide future actions. Legal reasoning is seen as a branch of practical reasoning, which is the practical application of human reasons to decide how to conduct themselves in the matter of choice (MacCormick 1994). The use of human reasons in strategy formulation is emphasized by Hofer and Schendel (1978) in the allocation of resources to achieve organizational objectives. Both the legal process and the IS strategy process are associated with political contest. The outcome can be a compromise, or the clear victory of the dominant party over the others. Though formally enacted, both laws and IS strategy are not able in themselves to resolve controversies in the implementation. The resolution of controversies involves interpretation of the rules, which keeps in play the arguments of principle that lie behind the document. The interpretation of a law occurs after the formal formulation of the law and occurs in the light of concrete circumstances which are often different **from** the circumstances surrounding the deliberation of the law. Because of these, the whole discourse and debate associated with interpreting the law during its implementation may not repeat the same arguments and points as in the **original** process of formulation. Here precedents from one's own social unit or similar cases from other social units function as important sources to enrich the **argumentation**. Given that laws making and enforcement have a rich history behind them, it may come as a surprise that they are rarely used as a source of inspiration in information research and practice. An exception is Stamper (1987) who notices a strong affinity between systems analysts and the process of **legal** drafting. Both could be thought of as quests for meanings.

In the following sections, I would deal with four areas which exhibit similarities between laws and information system strategy. These are certainly not exhaustive. Rather they are meant to serve as points to stimulate further inquires and reflection. First is the tortuous process of drafting and enacting a piece of law. Second, the world being quite complex, these laws have to be **skilfully** interpreted when they are confronted with the world of practice. Third is the phenomenon of persistent tendency of the social world to give rise to practices that are officially discouraged or forbidden. Another manifestation of such behaviour is that things can function happily without written rules. Fourth is the use of laws or IS strategy as some kind of symbolic phenomenon. These four aspects are discussed in sections 2, 3, 4 and 5 below. Section 6 concludes the paper.

## 2 Complex Process of Drafting and Enacting a Law

Before a law goes finally into the statue book, there is a long tortuous process of sensing the need for a new law or amending an existing law, drafting it, debating it, and persuading the legislative body to approve it. This is a broad picture how things proceed in a parliamentary democratic state. How things occur in other political systems is another matter, to be touched on later. The process is complex and cannot be easily described, which promoted a former First Parliamentary Counsel to warn that “it is even more difficult to write intelligibly about drafting than to draft intelligibly (Namasivayam 1967 : p. xi). For a law to have social relevance, it must reflect social need either in the light of social change or changing attitude, while at the same time it must not break violently with the past so that a sense of continuity and coherence is not lost. At the same time, it must be broad and flexible enough to take care of the problems likely to arise in the near future. It is as if we are to paraphrase Mintzberg (1989: p.42): *While law is a word that is usually associated with the **future**, its link to the past is no less central. As Kierkegaard once observed, **life** is lived **forward** but understood backward. Legal practitioners may have to experience the working of enacted laws in the future, but they must understand it through the past.*

As society is not homogenous, a myriad interests, ideologies and perceptions would like the proposed law to incorporate what they deem best. Such desire makes a lot of sense when we realize that laws, once enacted, have the power of the state behind them, and they have an institutional character. The process of law enactment or amendment is rightly regarded as deeply involved with human interests of the

whole society. Hence the fierce debate, lobbying, argumentation, behind-the-scene horse trading and compromise in many stories we read in the press about law making. These attributes are not unique to the legislative arena, but a part of life. “Forming a coalition in order to support a policy, whether in a legislature or a boardroom, involves standard techniques of horse-trading, persuasion, bribes, threats, and management of information. These are the conventional procedures of discussion, politics, and policy-formation (Baier, March and Saetren 1988: 157).” There are champions, opponents as well as onlookers. They have served as rich materials for television soap operas, with some exaggerations added for theatrical effects.

The case of the power dimension in legislature is often over-shadowed by our attraction to the idea of rationality, logical argument, legal niceties, and sense of fairness. However, a close study of how laws are enacted clearly do not fit this picture, as contained in the cited passage above. We are told often in the mass media that a certain piece of proposed legislature would not be passed in Parliament because the sponsor belongs to the minority opposition. We are not told how stupid the proposal is. The dimension of power is quite evident in the case of how countries with a weak democratic tradition bulldoze through Parliament various kinds of legislatures. In the more extreme form, we have politicians who come to power by military coup, only to amend the constitution and related laws to give the junta legal status.

If we use the above passage to reflect on the formation of IS strategy, we find that the process of law making bears some striking similarities with the process of IS strategy formation. There is ample literature documenting the issues of power, politics, compromise and negotiations in IS strategy formulation, e.g. **Walsham (1993)**, Jones (1994) and Heng and Newman (2000). The case of opponents to IS strategic initiative is also well known, while the case of champions is less well reported but important (Beath 1991). What we have not seen much in IS literature is a rich account of bribes, threats and horse-trading. The case of brutal use of power to impose a certain IS strategy, the nearest equivalent of a military coup in the preceding passage, is when a company is a victim of a hostile takeover, and when the new owner imposes its own IS strategy.

As to the dual features of ‘lived forward’ and ‘understood backward’ in the **italicised** paraphrase of Mintzberg in an earlier passage, I would plead mischief, and produce the original passage here. “While **strategy** is a word that is usually associated with the future, its link to the past is no less central. As **Kierkegaard** once observed,

life is lived forward but understood backward. Managers experience the working of strategy in the future, but they must understand it through the past. Mintzberg (1989: p.42)” The underlined words (strategy, Managers, strategy) have been substituted with the words (*law*, *Legal practitioners*, *enacted laws*). Such exercise is more than doing a game of word, as can be seen **from** the **fruitful** discussion along similar line by Lee (1991) who draws on Schon’s (1983) epistemology of reflection-in-action in examining the use of architecture as a reference discipline for management information systems.

### 3 The Need for Interpretation

The draftsmen who advise parliament on the drafting of legislation, **judges** and lawyers have gone through more or less the standard legal training and share by and large the same conventions in the use of words. Moreover **they** have to **operate** within a strict set of rules regarding interpretation of laws, such as doctrines **of precedent and doctrine of legislative supremacy**. These would restrict if not totally eliminate idiosyncratic conjectures and interpretations by the legal practitioners. In fact interpretation of an enacted legislature forms an integral part of the legal profession (Harris 1997; Friedman 1975; MacCormick 1994). In spite of these points, there is special attention role assigned by society to judges and the courts to conduct meticulous interpretation of written laws.

A rather natural question is: why the fuss about interpretation? The reasons are not too difficult to find, and they are very sound. To begin with, draftsmanship is often careless and imprecise (Friedman 1975). This defect could probably be reduced with more careful of legal draftsmen and more rigorous training. The deeper reason is associated with something beyond human control. The circumstances, intentions and the whole societal climate of a legislature at the time of enactment are usually different from the time the law is called into use. Social necessities and social opinion, so wrote Sir Henry Maine (1861), are always more or less in advance of the law. As laws are encoded in natural language, words have meanings dependent on conventional semantic and other rules of normal linguistic usage. “Words do not have fixed meanings; unforeseen situations spring up. (Friedman 1975: p.267).” In part, this reflects broader social **change** and the concomitant attitudinal **shift** as well as accumulated understanding of the merits and demerits of the legislature. That is why MacCormick (1994) insists that **legal** decisions must make sense in the world and they must also make sense in the

context of the legal system (p. 103). This point is quite evident when we reflect on the changing attitude towards banning books on the basis that they are subversive or obscene. For the Americans, the case of efforts to defend **freedom** of speech goes beyond merely citing the first amendment of the US constitution. The descriptions of efforts in this direction as documented in **Rembar** (1968) reads like a novel in itself, full of **ingenuity, wit**, twists and **turns**, and intellectual conviction. Incidentally, the book also illustrates that the struggle for a more enlightened interpretation is a **skilful act taking** place within a wider societal context, with its history, **changing** norms and **power** relations. The outcome is not assured *a priori*. It **reaffirms that** “Jurisdiction in a broad sense is dynamic. Active, ambitious agencies test the boundaries of **neighboring agencies looking** for **soft** spots, weaknesses through which **power can ooze** (Friedman 1975: 257).”

Though immense effort is poured into writing a law as clearly as possible, the written law cannot pretend to anticipate all concrete cases of its future applications. The result is a language of ambiguity. Ambiguity as a kind of confusion caused **by multiple** meanings calls for social construction (**Berger and Luckmann** 1967; Weick 1995). Most interpretations involve political interests, consequences, coercion, persuasion and rhetoric (Weick 1995). When such interpretations by influential social actors and powerful institutions are taken seriously by the members of a society, the new interpretation acquires as it were a new “life” of its own, either intended by the original authors of the law or otherwise. In this sense, it does affect the material world out there by becoming objectified, diffused, and widely internalised into what comes to be called a consensus.

**The** emphasis given to interpretation of laws puts into shade the emphasis given to interpretation in literature on IS strategy. Various methods of strategic information systems **planning** treat the issue as non-problematic. The nearest I can find in the recognition of this problem is in **Walsham** (1992) who argues for creative autonomy for those involved in implementation. The interpretative approach has gained a growing **following** as a useful method in conducting information systems research. But judging from reports in IS research literature and business press, it has somehow not enjoyed a **similar** attention in the area of interpreting information systems strategy by IS practitioners.



#### 4 In Praise of Occasional Lapse

The richness of social life cannot be encapsulated in a set of rules. This crucial aspect of our life has not escaped the sharp eyes of students of law. For example, Pound (1954) points out that there is a distinction between “the law in books” and “the law in action”. The latter is similar to the living law, a term coined by Ehrlich (1936) to describe actual behaviour patterns in a community. According to Ehrlich, social associations have an inner order which is the true determination of action. He does not recommend that people should ignore the book law which contains norms for decisions addressed to officials and may well affect what they do. Ordinary citizens, however, follow the living law, the spontaneous norms of the social associations to which they belong. This point is quite clear in the active underground economic activity in Italy, and to a lesser degree in many other countries. These activities are officially prohibited, but they contribute under the existing conditions of many countries, to the vitality of the economy. Moreover, banning these activities all together is well nigh impossible. In political life, it is also possible to operate very well without clearly written constitution, e.g. the famous case of Britain without a written constitution. Viewed from this perspective, we should feel comfortable about our limited ability to chum out adequate rules to regulate everything.

We often read about cases of island automation both in scholarly literature and business press. This is seen as undesirable from the point of view strategic information planning (Cash, McFarlan and McKenney 1988; Henderson, Thomas and Venkatraman 1992). Viewed from the complex reality of social life, as illustrated in our above study of drafting and actual application of legislature, their occurrence is inevitable. It may makes more sense for IS strategy to deliberately leave room for a bottom up approach. It would mean leaving resources for tinkering and bricolage (Ciborra 1994). We must not assume that we *can* take care most of the *essential* aspects of IS strategy, let alone all the potential rewarding applications. In other words, strategy formulation should specifically allow spaces for systems to be developed and to operate outside the known scope of the strategy, sometimes as a case of island automation, sometimes as systems alien to the organisational structure and culture. These systems are like the informal economy or black economy, illegal from the legal point of view, yet fulfilling some needs that cannot be fulfilled by the legal business world. In a more exceptional case, an IS department can function

without a written statement of IS strategy, in a sort of adhocracy (Mintzberg 1989). Why not? Just like Britain doing pretty well without a written constitution,

## 5 As Part of Symbolic Activity

As an important activity in socio-political life, law making bears certain deep attributes of us as symbolic beings. The role of symbols has been widely studied by anthropologists and sociologists, and has formed part of the standard material in textbooks like Giddens (1995). Such dimension tends to be absent in law texts which concentrate on the content of legal learning such as Friedman (1975), Lloyd (1987) and Harris (1997). If we look further than this, we do find reports of the symbolic phenomenon of law making. Analyses of the United States Congress suggest that the act of voting for legislation with appropriate symbolic meaning can be more important than either its enactment or its implementation (Mayhew 1974). The law makers are more interested in the support of their constituents, which leads them to be vigorous in enacting policies but lax in issues related to their implementation. In order to secure agreement on policy, the policies are often oversold, the real level of support for the policy is exaggerated, and one common method for securing policy support is to deliberately increase the ambiguity of a proposed policy (Baier, March and Saetren 1988).

Individuals and groups support often with exceptional effort and cost the adoption of policies that symbolize important affirmation, even where they are relatively unconcerned with the ultimate implementation of the policies. In a rather cynical sense, we are told by Arnold (1935: p.34), “It is part of the function of Law to give recognition to ideals representing the exact opposite of established conduct. Most of the complications arise from the necessity of pretending to do one thing, while actually doing another.”

The above observations on how law making bears profound similarities with the social and cultural dimensions of the use of strategy as planning (Mintzberg 1987). Activities associated with IS/IT strategy do not occur in a social vacuum. In other words, they are embedded in the broader societal milieu and operate under the influence of its dominant business norms. Such norms attach value to rationality-based business practices such as the formulation of a business plan. Knights and Morgan (1991) remark that the whole concept of corporate strategy can be perceived as a discourse (Foucault 1980). It shapes the way in which organizational members

see themselves and their world; it also constitutes the problems it claims to solve. In particular, strategic discourse is seen as having a number of specific power effects that tend to reinforce the position of management in organizations. For example, strategy can provide managers with a rationale for their actions, legitimize their power and prerogatives, and support their sense of identity. The whole exercise related to IS strategy formulation can be seen in this light and it would appear to be an issue of convention, legitimacy and survival. This suggests that as part of formal practice, the exercise of strategy formulation has symbolic properties. “Organizations are driven to incorporate the practices and procedures defined by prevailing rationalised concepts of organizational work and institutionalized in society. Organizations that do so increase their legitimacy and their survival prospects, independent of the immediate efficacy of the acquired practices and procedures “(Meyer and Rowan 1977, p.340). As revealed by a chief information officer cited in Heng and Newman (2000), the absence of strategic information systems plan is seen to be a serious omission.

## 6 Concluding Remarks

In researching materials for this paper, I notice that law as a discipline and profession had developed its identity and established its viability long before the emergence of management and organizational studies, let alone information systems. The legal practice is well known for its emphasis on logic, logical consistency and rationality. In the words of Lloyd (1987), the human mind feels a natural disposition towards treating like cases alike, and this tendency plays an important role in the functioning of the principles of justice. “What constitute like cases, however, though in some instances fairly easy to resolve, may in others give rise to considerable doubt (Lloyd 1987:267-8).” Such difficulties is solved by the way lawyers and legal thinkers reason their actual cases. They follow a pattern similar to that of everyday life. This is hardly surprising, for law is a practical science dealing with everyday problems and is expressed and argued in ordinary language. The upshot is that the social phenomena surrounding law are very rich in the details of human activities such as negotiation, consensus, interpretation, power struggle conducted in a civil manner, skilful use of language, and appeal to social norms. This fact provides a bridge for us to learn from the world of legal practice as an attempt to understand the various issues and activities in information systems strategy formulation and implementation.

From the four aspects that we examine in sections 2 to 5, it may be said that there is a basis for the approach adopted in his paper. The study confirms that there exist indeed affinities between law and information systems strategy. As suggestions for further research, there are two areas which can be interesting. First is to explore more areas of similarities between law and information systems strategy, beyond the four aspects we look at so far, for example, the role of sudden change in the environment or crisis induced transformation. Second, we can conduct a similar exercise with other areas of information systems, for example, information systems development and implementation.

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